IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4085 OF 2005

Prakash Ganesh Aphale & Ors. : Petitioners

V/s.

Enquiry Officer being Deputy Registrar

Co-operative Society & Anr. : Respondents

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Mr.P.S.Dani for the petitioners.

Mr.A.H.Palekar, Asstt. Govt. Pleader for the respondent no.1.

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CORAM : S.A. BOBDE, J.

June 30, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Palekar, learned Asstt. Govt. Pleader, appears and waives service of rule on behalf of the respondent no.1. Heard by consent.

2. The petitioners sought witness summons in respect of certain persons named in the application dated 15.1.2005 in the course of an inquiry under section 88 of the Maharashtra Co-operative Societies Act, 1960. This application has been rejected.

3. The learned counsel for the petitioners submitted that two petitions were earlier preferred before this Court being Writ Petition nos.936 of 2003 and 1048 of 2004. In the latter, a specific prayer was made for issuance of the same witness summons. This petition was disposed of by the Court by the following order:-

> "Considering the order passed in Writ Petition No.936/2003 on 13/4/2004, this Petition also disposed of in the terms of the said order."

It is clear from the order passed in Writ Petition no.936 of 2003 that the said Writ Petition was disposed of in view of the undertaking by the Inquiry Officer that he would not vitiate the principles of natural justice during the course of the proceedings. It is, therefore, obvious that this Court considered refusing to issue witness summons in the facts of the present case as a denial of natural justice.

4. In these circumstances, the impugned order refusing to issue witness summons is not sustainable and is, therefore, set aside. The Inquiry Officer will issue witness summons as prayed for by the petitioners, in accordance with Order 16 of the C.P.C.

5. The rule is made absolute in the aforesaid terms.

6. Parties be given authenticated copy of this order.

Sd/-

S.A. BOBDE, J.